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avail to set aside the contract of marriage. *Swift v. Kelly* (1835) 3 Kn. 257. This was extended to cases where there was physical incapacity, and the impotence existed before the marriage. Annulment was decreed after a required cohabitation of three years; or upon medical examination, *G—— v. G——* (1871) L. R. 2 P. 287. Also upon the legal fiction of inferred incapacity from the refusal of the respondent to cohabit. *S—— v. A——* (1878) 3 P. D. 72; *B—— v. B——* [1901] P. 39. The wilful and persistent refusal to consummate the marriage contract was *per se* and irrespective of any inferred incapacity, a sufficient ground for a decree of annulment, even though the husband knew before marriage of his wife's intention not to have intercourse. *Dickinson v. Dickinson* [1913] P. 198. In this country impotence has been held to be a ground for annulment. *Payne v. Payne* (1891) 49 N. W. (Minn.) 230. Likewise misrepresentation as to physical condition. *Reynolds v. Reynolds* (1862) 3 Allen (Mass.) 605. Also fraudulent concealment of the existence of disease. *Smith v. Smith* (1898) 171 Mass. 404. The principal case following the authority of *Dickinson v. Dickinson*, *supra*, has decreed annulment where no physical incapacity existed.

B. L.

MASTER AND 'SERVANT—WORKMEN'S COMPENSATION ACT—REFUSAL TO SUBMIT TO OPERATION AS CONTRIBUTORY NEGLIGENCE.—*KRICINOVICH v. AMERICAN CAR AND FOUNDRY Co.* (1916) 159 N. W. (MICH.) 362.—The plaintiff suffered a compound fracture of the leg while in the employ of the defendant, and was twice operated on by physicians who pronounced this particular injury cured. As he continued to complain of pain, another operation to remove the entanglement of a nerve filament was recommended, but he refused. *Held*, that where the operation was not dangerous and offered a reasonable prospect of success, the plaintiff must submit or relieve the company of its liability to compensate him for his continued incapacity after such refusal.

No court will require submission to an operation where the possibility of death is involved, even though all except forty-eight operations out of twenty-three thousand may have been successful. *McNally v. Hudson & M. R. Co.* (1915) 87 N. J. L. 455, affirmed (1916) 88 N. J. L. 729; *Mattes v. Phila. Traction Co.* (1897) 19 Pa. Co. Ct. 106. The law is not so lenient with a complainant when there is no chance of death. In regard to such cases there is decided conflict. Some courts have held that the burden is on the employer, not only to prove the absolute safety of the operation, but also that it would be successful. On these grounds a plaintiff was justified in refusing to take ether, so as to permit the manipulation of her arm to break down the adhesions around the shoulder joint. *O'Donnell v. R. I. Co.* (1907) 28 R. I. 245. A seaman who refused to permit a slight operation on his injured finger, later being compelled to have it amputated, was permitted to recover because the defendants did not prove that the proposed operation would have saved the finger, although it was found as a question of fact that the plaintiff had been unreasonable in refusing to submit to the operation. *Marshall v. Orient*

Steam Navigation Co. [1910] 1 K. B. 79. Where an operation is sure to remove the incapacity, the workman must submit or release the company. *Varncken v. Moreland and Son* [1909] 1 K. B. 185. Where in all probability an operation would have restored capacity, a refusal was unreasonable and prevented recovery. *Walsh v. Lock & Co.* [1914] 110 L. T. 452. The principal case goes one step farther and holds that where there is a reasonable chance of success, the plaintiff's refusal to undergo an operation bars any recovery after his refusal. But this advance of the rule of reasonableness brings it into direct conflict with *Marshall v. Orient Steam Navigation Co.*, *supra*.

J. E. H.

MUNICIPAL CORPORATIONS—CEMETARIES—EXEMPTION FROM TAXATION.—*WOODMERE CEMETRY ASSN. v. CITY OF DETROIT* (1916) 159 N. W. (MICH.) 383.—Comp. Laws, 8406, declare. "All the lands of said corporation enclosed and set apart for cemetery purposes, and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever." Proceedings were instituted to condemn and sell the plaintiff's land because of its refusal to pay the assessment for paving adjoining streets. *Held*, that the plaintiff was not liable for the assessment. Brooke, Steere, Bird, Kuhn, JJ., *dissenting* on the ground that the plaintiff was liable to pay the tax out of other assets, though concurring that the plaintiff's land could not be condemned.

Laws exempting cemeteries from taxation are very strictly construed. Exemption from taxation does not exempt from special assessments for local improvements unless specifically shown to be intended. *Bloomington Cemetery v. People* (1891) 139 Ill. 16. If the additional word "assessment" is used, this is generally construed to provide complete exemption. *Barry v. Wesleyan Cemetery Assn.* (1881) 10 Mo. App. 587; *Oakland Cemetery v. Yonkers* (1901) 71 N. Y. S. 783. Some states have held that "public taxes and assessments" included only general, indirect charges and not specific direct benefits for one locality. *Buffalo City Cemetery v. Buffalo* (1871) 46 N. Y. 506. A statute exempting from all taxation has been held not to include relief from assessments. *Mullins v. Mt. St. Mary's Cemetery Assn.* (1912) 239 Mo. 681. Likewise, one exempting "from any tax or imposition whatsoever." *Baltimore v. Green Mt. Cemetery* (1855) 7 Md. 517. A contrary interpretation was given to a statute exempting from "execution, taxation or any other claim, lien or process." *Union Dale Cemetery Company's Appeal* (1910) 227 Pa. St. 1. The intention of the legislatures is to prevent destruction of the burial places of the dead, not to assist the enterprises of corporations. Hence, when there were any assets aside from the grounds, they have generally been held liable for assessments. The majority base their opinion on the ground that exemption from the lien means exemption from the tax. The dissenting opinion, disagreeing on this point, and holding all the assets of the corporation, except the burial grounds themselves, liable for local improvements, seems to be more in accord with public policy and the intention of the legislature, and to represent the weight of authority.

J. E. H.